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Before the
FEDERAL COMMUNICATIONS COMMISSION FEB - 7 1995

Washington, D.C. 20554

In the Matter of

JAMES A. KAY, JR.

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four Part 90 licenses in the
Los Angeles, California area

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PR DOCKET NO. 94-147

WT DOCKET NO. 94-147

DOCKET FILE COPY ORIGINAL

To: The Honorable Richard L. Sippel, Administrative Law Judge

REQUEST FOR PERMISSION TO FILE APPEAL

James A. Kay, Jr. (Kay), by his attorneys, respectfully requests permission to file an appeal of the presiding officer's Order released on February 3, 1995 (the Order), in the above captioned matter. In support of his position, Kay shows the following:

In complying with Section 1.301(b) of the Commission's Rules, 47 C.F.R. §1.301(b), Kay respectfully shows that permission should be granted to file an appeal of the Order because new or novel questions of law are presented by the Order and the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.

One novel issue is presented, namely, the issue of whether Gary P. Schonman, an attorney with the Mass Media Bureau (MMB), has lawful authority to cross bureau lines to represent the interests of another Bureau.

In determining whether an attorney for the MMB has lawful authority to cross bureau lines to represent the interests of another bureau it is necessary to look at that part of the

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Communications Act that prescribes organization by integrated bureaus. Section 5(b) of the Communications Act of 1934, as amended, provides that

From time to time as the Commission may find necessary, the Commission shall organize its staff into (1) integrated bureaus, to function on the basis of the Commission's principal workload operation, and (2) such other divisional organizations as the Commission may deem necessary. Each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions.

47 U.S.C. §155(b) (Section 5(b)). The Order stated that "there is no language in the statute that prohibits inter-Bureau assignments". However, the legislative history of Section 5(b) demonstrates that it was Congress's express intent to discontinue the roaming of Commission lawyers among the functions involved in the regulation of broadcasting, common carriers, and the special and safety radio services,¹ *see*, Senate Report No. 44, 82nd Cong., 1st Sess. 6 (1951); and House Report No. 1750, 82nd Cong., 2d Sess. 6 (1952), excerpts from which are attached as Exhibit I hereto.

The Congressional intent was clear. The purpose of maintaining the organization of the Commission into integrated bureaus was to insure that the personnel in each bureau developed a particular specialty or expertise in the area they were assigned to. Mr. Schonman is assigned to the MMB which is not a party to the instant proceeding. His representation of a bureau other than the MMB is in direct violation of the Congressionally mandated organizational structure of the Commission. The Congressional intent is clear that a

¹Subsequent to 1951, the Broadcast Bureau became the Mass Media Bureau and the Safety and Special Bureau was renamed the Private Radio Bureau.

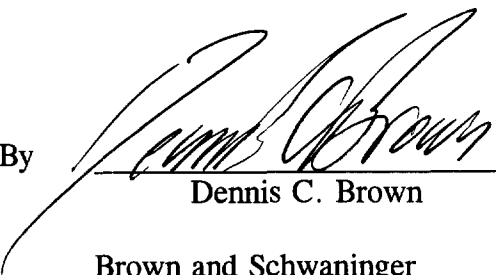
broadcasting, (*i.e.*, MMB), lawyer is not to be permitted to cross bureau lines, and that each bureau shall be integrated. Therefore the presiding officer should disqualify Mr. Schonman's representation of the Wireless Telecommunications Bureau in the instant matter because Section 5(b) of the Act was clearly intended to prohibit the disintegration of the bureaus which such representation would produce.

This request for permission to appeal is filed pursuant to 47 C.F.R. §1.301(c)(6). Kay respectfully explains that he is not requesting that the presiding officer reconsider his action in the Order but rather, he is requesting permission pursuant to 47 C.F.R. §1.301(c)(6) to file an interlocutory appeal with the Review Board.

Conclusion

For all of the foregoing reasons, Kay respectfully requests permission to file an interlocutory appeal of the Order with the Review Board.

Respectfully submitted,
JAMES A. KAY, JR.

By 
Dennis C. Brown

Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006
202/223-8837

Dated: February 7, 1995

EXHIBIT I

SENATE REPORT ON COMMUNICATIONS ACT

Senate Report No. 44, 82d Cong.,

1st Sess., submitted January 25, 1951

Senate Report on 1952 Amendments, pages 6-7.

The most important subsection, and in the committee's opinion one of the most important of the entire bill here recommended, is subsection (b) which would reorganize the Commission into a functional organization. To make clear what the effect of this subsection would be, it should be explained that the Commission has been organized into three principal bureaus— Engineering, Accounting and Legal. It also has, of course, other subsidiary sections and units but the bulk of its licensing work flows upward through these three bureaus. Regardless of the type of case involved, each of these three bureaus must independently, or occasionally in consultation, pass upon applications and other types of cases. Whether or not this system is responsible, the fact remains that the Commission's backlog of cases has continued to mount to alarming proportions. Hearing cases rarely get out in less than 2 years; some have been before the Commission as long as from 4 to 7 years.

Citizens and taxpayers are entitled to greater consideration and better service from their government than this. Moreover, under this system, the three bureaus have become self contained and independent little kingdoms, each jealously guarding its own field of operations and able to exercise almost dictatorial control over the expedition of a case. They can, and have, set at naught the best efforts of individual Commissioners to spur action.

The committee has, therefore, written into law by subsection (b) a mandatory reorganization provision but on the recommendation of the Commission has allowed wide flexibility to accommodate possible changes in the nature and volume of the Commission's work in future years. The Commission would be required within 60 days after enactment of this bill to organize its Legal, Engineering, and Accounting Bureaus into such number of integrated divisions as are deemed necessary to handle the Commission's work load problems. Under existing circumstances, these are expected to number three— broadcasting, common carrier, and special safety service. Each of these divisions would include all necessary legal, engineering and accounting personnel to handle the work but would operate together as a team rather than separate professional groups. The Commission would have authority to establish whatever additional divisions may be necessary to handle that part of its work load which may cut across the divisional organizations or which may not lend itself to handling by an integrated divisional unit.

Coupled with this divisional set-up, the committee also has provided for the establishment of a review staff, consisting of legal, engineering, and accounting personnel, whose sole function shall be to prepare and review decisions, orders, rules, and other memoranda as the Commission shall direct. The review staff shall be directly responsible to the Commission, and its personnel shall not engage in the preparation or prosecution of cases. Neither the general counsel, the chief accountant, nor the chief engineer shall have any authority over it. Its purpose is clear; it is to separate with finality the prosecutory and judicial functions of the Commission so that the same individual who prosecutes a case in

behalf of the Commission before a hearing examiner shall not later be found preparing the final decision or advising Commissioners or the Commission as to the final decision. The records and facts well known to your committee and to the industry have proved beyond question that applicants have not always had the most equitable judicial treatment under the existing type of administrative judicial process. The committee believes that its proposed amendment will correct this situation.

Senate Report No. 44, 82d Cong.,
1st Sess., submitted January 25, 1951
Senate Report on 1952 Amendments, pages 276 to 277.

Cite as: SENATE REPORT ON COMMUNICATIONS ACT, S. REP. No. 44, 82d Cong., 1st Sess. 6 (1951)

Found at Pike and Fischer at paragraph 10:1035, pp10:276-77.

Subsection (b) will require the Commission to organize its staff into (1) integrated bureaus, to function on the basis of the Commissions's principal work load operations, and (2) such other divisional organizations as the Commission may deem necessary to handle that part of its workload which cuts across more than one integrated bureau or which does not lend itself to the integrated bureau set-up. It is provided that each such integrated bureau shall include such legal, engineering, accounting, administrative, clerical, and other personnel as the Commission may determine to be necessary to perform its functions....

Cite as: HOUSE REPORT ON COMMUNICATIONS ACT, H.R. REP. No. 1750, 82nd Cong., 2d Sess. 6 (1952).

House Report on 1952 Amendments:

10:306

Found at Pike and Fishcher at paragraph 10:1059, page 10:306.

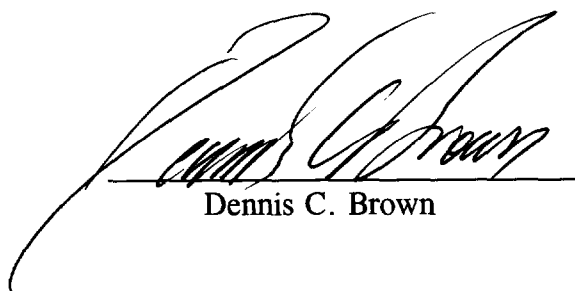
CERTIFICATE OF SERVICE

I, hereby certify that on this seventh day of February, 1995, I served a copy of the foregoing Request for Permission to File Appeal on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

February 7, 1995

Gary P. Schonman, Esquire *
Federal Communications Commission
Hearing Branch
Mass Media Bureau
Suite 7212
2025 M Street, N.W.
Washington, D.C. 20554

W. Riley Hollingsworth, Esquire
Deputy Associate Bureau Chief
Office of Operations
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325



Dennis C. Brown

* By Hand Delivery